

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

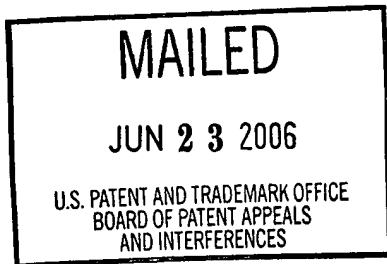
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY L. BLUCHER

Appeal No. 2006-1267
Application No. 09/491,639

HEARD: JUNE 6, 2006



Before FRANKFORT, CRAWFORD and BAHR, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 5, 9, 11, 28 through 35, 38 through 48, 52 through 59 and 63. Claims 6, 7, 49 through 51 and 60 through 62, the only other claims remaining in the application, have been withdrawn from further consideration. Claims 8, 10, 12 through 27, 36 and 37 have been cancelled.

Appellant's invention relates to a flexible, polymeric, contour fit pan liner within a food service pan to form a barrier between food placed within the pan and the interior surface of the pan. As noted on page 5 of the specification, the pan liner is preferably formed of a high temperature nylon resin material suitable for food cooking and food preparation which will preferably withstand a temperature of about 400°F. Independent claims 1, 32, 34, 38, 42 and 53 are representative of the subject matter on appeal and a copy of those claims can be found in the "Claims Appendix" attached to appellant's brief.

The prior art references relied upon by the examiner in rejecting the appealed claims are:

Ibsch, Jr. (Ibsch)	2,542,413	Feb. 20, 1951
Geigel	3,357,152	Dec. 12, 1967
Binks	4,320,699	Mar. 23, 1982
Van Erden et al. (Van Erden)	4,759,642	Jul. 26, 1988
Ferlanti	4,828,134	May 9, 1989

M&Q Plastics Products brochure, dated 1995.

Claims 38, 42 through 45 and 53 through 56 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Binks.

Claims 1 through 5, 9, 30 through 35, 38, 42 through 48, 52 through 59 and 63 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Binks in view of Geigel and Van Erden.

Claims 11, 28, 29, 39, 40 and 41 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Binks in view of Geigel and Van Erden as applied above, and further in view of the M&Q brochure.

Claims 1 through 5, 9, 11, 28 through 35, 38 through 48, 52 through 59 and 63 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ibsch or Ferlanti in view of Geigel, Van Erden and the M&Q brochure.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellant regarding those rejections, we make reference to the answer (mailed June 9, 2005) for the examiner's reasoning in support of the rejections, and to appellant's brief (filed May 16, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that none of the examiner's rejections on appeal will be sustained. Our reasons follow.

We turn first to the examiner's rejection of claims 38, 42 through 45 and 53 through 56 under 35 U.S.C. § 102(b) as being anticipated by Binks. The examiner's statement of this rejection is found on pages 4-5 of the answer. For the reasons set forth on pages 16-21 of the brief, we agree with appellant that Binks does not anticipate the pan liner system recited in independent claims 38, 42 and 53 on appeal, or claims 43 through 45 and 54 through 56 that depend from claims 42 and 53, respectively. The examiner points specifically to Figure 2 of Binks to support the rejection. Like appellant, it is clear to us that Binks discloses a flat sheet or liner (10) of heat softenable tetrafluoroethylene (TFE) polymer which is simply laid in a relatively shallow pan (11) and subsequently heated to soften and become limp, thereby allowing the liner to conform to the pan's heated cooking surface under a load

of the material to be subjected to the cooking heat (col. 4, lines 42-46). Contrary to the examiner's assertions, the flat sheet of Binks is not "formed in the shape of a bag having side edges and a contoured bottom edge" as set forth in claim 38, or "formed as a bag comprising two polymeric sides meeting at sealed side edges and having open top edges" and a contoured bottom edge means as required in claim 53. Moreover, the sheet liner of Binks does not have two sides meeting at side edges and a contoured bottom edge having a single central edge portion and two contoured edge portions extending outwardly from each end of the single central edge portion to meet the side edges, with the polymeric side edges bonded together along at least the two contoured edge portions and the side edges, as in claim 42 on appeal.

For the above reasons, we will not sustain the examiner's rejection of claims 38, 42 through 45 and 53 through 56 under 35 U.S.C. § 102(b) as being anticipated by Binks.

As for the rejection of claims 1 through 5, 9, 30 through 35, 38, 42 through 48, 52 through 59 and 63 under 35 U.S.C. § 103(a) as being unpatentable over Binks in view of Geigel and Van Erden, we agree with appellant's assessment set forth in the brief (pages 21-

30). Simply stated, neither the plastic bag of Geigel for carrying cement, flour, fertilizer, carbon black, etc, nor the reclosable cereal bag of Van Erden provide any teaching, suggestion or incentive for modifying the flat sheet pan liner of Binks so as to result in the pan liner system and food preparation and service system claimed by appellant. Thus, we will not sustain the examiner's rejection of claims 1 through 5, 9, 30 through 35, 38, 42 through 48, 52 through 59 and 63 under 35 U.S.C. § 103(a) as being unpatentable over Binks in view of Geigel and Van Erden.

We have also reviewed the M&Q brochure relied upon by the examiner in the rejection of dependent claims 11, 28, 29, 39, 40 and 41 under 35 U.S.C. § 103(a) as being unpatentable over Binks in view of Geigel and Van Erden as applied above, and further in view of the M&Q brochure. Here again, we agree with appellant's assessment of the rejection on appeal, noting particularly pages 42-43 of the brief. Thus, we will not sustain the examiner's rejection of claims 11, 28, 29, 39, 40 and 41 under 35 U.S.C. § 103(a).

The last of the examiner's rejections for our review is that of claims 1 through 5, 9, 11, 28 through 35, 38 through 48, 52 through 59 and 63 under 35 U.S.C. § 103(a) as being unpatentable over Ibsch or Ferlanti in view of Geigel, Van Erden and the M&Q brochure. Like the situations above where the examiner was proposing to modify the pan liner of Binks based on the teachings of Geigel, Van Erden and the M&Q brochure, we find no teaching, suggestion or incentive for modifying the pan liners of either Ibsch or Ferlanti relying on the plastic bag of Geigel which carries cement, flour, fertilizer, carbon black, etc, or the reclosable cereal bag of Van Erden. The addition of the M&Q brochure does nothing to alter that view. Thus, for the reasons set forth on pages 43-45 of the brief, we will not sustain the examiner's rejection of claims 1 through 5, 9, 11, 28 through 35, 38 through 48, 52 through 59 and 63 under 35 U.S.C. § 103(a) as being unpatentable over Ibsch or Ferlanti in view of Geigel, Van Erden and the M&Q brochure.¹

¹ Given our disposition of the examiner's rejections under 35 U.S.C. § 103, we have found it unnecessary to comment on appellant's evidence of non-obviousness in the form of the declarations from Dr. Melvin Druin and Timothy Blucher.

REVERSED

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9

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